IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on : April 19, 2007
Date of decision: May 18, 2007

\+ FAO 113/2001

\# HARISH CHANDER DRALL ..... Appellant
! Through Mr. B.T. Singh, Advocate

versus

$ SURESH WATI ..... Respondent
^ Through Mr. Anil Kumar, Advocate

CORAM :-
HON'BLE DR. JUSTICE S. MURALIDHAR

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in Digest?

:Dr. S. Muralidhar, J.

1. This appeal is directed against the judgment dated 24.1.2001 passed by the Additional District Judge Delhi dismissing the appellat's petition HMA No. 17/2000/94 seeking dissolution of marriage under section 13(1)(ia) of the Hindu Marriage Act, 1955 ('Act') on the ground of cruelty.

2. The parties were married on 3.6.1982 and a child was born on 7.10.1993 but died immediately thereafter. The appellant lays the

blame for the death of the child on account of the negligence of the respondent and her parents. His case is that soon after the marriage the relationship between the respondent and the members of his family became sour. The respondent used to have fits of mental unsoundness and when the appellant and his family tried to get her medically examined she refused and also abused the family of the appellant. It is then stated that the respondent pressurised the appellant to set up a separate residence and the appellant did not agree to this. The respondent used to frequently go away to her parents house and make life difficult for the appellant.

3. On the basis of these allegations the appellant filed a petition for divorce on the ground of cruelty which ended in a compromise before the Civil Court on 28.10.1992. The parties got back together after the compromise but again matters broke down. A complaint was filed by the respondent in January 1993 with the Crime Against Women Cell. A compromise was again arrived at. Second complaint was filed in July 1993 followed by a third complaint in April 1994. Consequent upon the third complaint, a criminal case was registered under section 406 and 498 A IPC against the appellant and his parents. It was thereafter that the present petition for divorce was filed on the ground of cruelty.

4. The learned trial judge after examining the evidence on record came to the conclusion that the appellant had not established the allegation that the respondent had treated him with cruelty. On the contention of the appellant that the respondent, had behaved badly in the presence of neighbours, the trial court observed that the appellant had not produced any independent evidence. Further, even the parents of the appellant were not produced as witnesses. The appellant was also not able to explain why, after the compromise was reached, he took back the respondent only after two or three months. The attempt to show that the respondent had abused him in his office also failed since the evidence in the form of PW2 Jaipal Singh was unhelpful. The said witness was not an eye witness to the incident. Moreover, he was a cousin of the appellant. The further allegation that the respondent had refused to cohabit with the appellant also was disbelieved by the trial court since admittedly the respondent delivered a child in October 1993. On all these grounds the trial court dismissed the petition.

5. The counsel for the appellant rested his arguments essentially on the ground that the filing of the criminal complaints and registering of the criminal case against the appellant and his parents on false basis tantamounted to cruelty. The counsel for the appellant

relies upon a large number of judgments to argue that the case of cruelty against the respondent is made out. Finally counsel for the appellant argued that the parties were living separately since 1994 and there was no possibility of them getting together. He submitted that the marriage had irretrievably broken down and therefore should be dissolved on that ground.

6. After examining the records of the case and the evidence led by the parties, this court is unable to find any ground for interfering with the reasoning and conclusion of the trial court. This court finds that the trial Court was right in its conclusion that the appellant had failed to prove that the respondent had treated him with cruelty. It has been repeatedly held both by the Andhra Pradesh High Court (in ***Gajala Shankar vs. Anuradha*** AIR 2006 AP 65) as well as this court (in ***Sheo Nath Singh vs. Sujata*** 2007 III AD (Del) 673) that the institution of criminal cases by themselves would not constitute cruelty. As far as the present case is concerned the criminal case is still pending. In any event, even if one were to assume that the criminal cases would end in acquittal, as this court has explained in the above case, that by itself will not constitute a ground for cruelty. Something more would have to be shown.

7. The evidence brought on record by the appellant does not establish the case of cruelty against the respondent at all.

8. As regards the ground of the irretrievable breakdown of marriage, the question of accepting such a plea on behalf of one spouse which has not been able to make good the allegation of cruelty against the other spouse should not be readily accepted. In ***Shyam Sunder Kohli vs. Sushma Kohli*** 2004 (2) HLR 513, the Hon'ble Supreme Court has observed that divorce on such a ground should not be lightly granted especially at the instance of the erring spouse.

9. Viewed from any angle this court is not inclined to interfere with the well reasoned order of the learned trial court. No grounds for interference are made out. The appeal is dismissed.

S. MURALIDHAR, J.

May 18, 2007
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